

APPEAL NO. 041616
FILED AUGUST 16, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 1, 2004. With respect to the issues before him, the hearing officer determined that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the fourth, fifth, and sixth quarters. In his appeal, the claimant argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed

The parties stipulated that the claimant sustained a compensable injury on _____; that he did not commute his impairment income benefits; and that he had at least a 15% impairment rating (IR). We note that the record reflects that the claimant's actual IR was 18% and that the stipulation was merely phrased in terms of demonstrating that the claimant satisfied the threshold of a 15% or greater IR. The fourth quarter of SIBs was identified as the period from June 30 through September 29, 2003, with a corresponding qualifying period of March 20 through June 18, 2003; the fifth quarter of SIBs was identified as the period from September 30 through December 29, 2003, with a corresponding qualifying period of June 19 through September 17, 2003; and the sixth quarter of SIBs was identified as the period from December 30, 2003, through March 30, 2004, with a corresponding qualifying period of September 18 through December 17, 2003. Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement either pursuant to Section 408.142(a)(4) by showing that he had a total inability to work during the relevant qualifying periods or by demonstrating that he conducted a good faith search for employment during the qualifying periods under Rule 130.102(e). Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work.

The hearing officer did not err in determining that the claimant did not satisfy the good faith requirement under either Rule 130.102(d)(4) or Rule 130.102(e). The hearing officer was not persuaded that the evidence presented by the claimant was sufficient to establish that he had no ability to work or that he made a good faith effort to look for work in the relevant qualifying periods. Nothing in our review of the record reveals that the hearing officer's determinations in that regard are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust.

As such, no sound basis exists for us to disturb the hearing officer's good faith determinations, or the determinations that the claimant is not entitled to SIBs for the fourth, fifth, and sixth quarters, on appeal. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Finally, we note that the claimant attached some new evidence to his appeal, which was not admitted in evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. See *generally* Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). The claimant did not show that the new evidence submitted for the first time on appeal could not have been obtained prior to the hearing. Thus, the evidence does not meet the standard for newly discovered evidence and it will not be considered.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Gary L. Kilgore
Appeals Judge